

UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

Clerk's Minutes

**Before the Honorable James O. Browning**

**CASE NO.** CIV 08-702 JB/DJS

**DATE:** August 19, 2008

**TITLE:** *American Assoc. of People With Disabilities, et al. v. Herrera*

**COURTROOM CLERK:** K' Aun Sanchez

**COURT REPORTER:** Danna Everett

**COURT IN SESSION:** 9:07 a.m.

10:03 a.m.

11:47 a.m.

1:22 p.m.

3:19 p.m.

**COURT IN RECESS:** 9:50 a.m.

11:26 a.m.

12:11 p.m.

3:10 p.m.

4:52 p.m.

**TYPE OF PROCEEDING:** Motion Hearing (see below)

**COURT'S RULINGS/DISPOSITION:**

1. Plaintiffs' Application for a Preliminary Injunction [14] - **HEARD AND POSSIBLY TO BE CONTINUED AT 8/29 HEARING**

2. Motion to Intervene (by Shannon Robinson) [25] - **NOT NOTICED, DISCUSSED, BUT NOT ARGUED**

3. Motion to Intervene (by Rep. Party) [27] - **NOT NOTICED, DISCUSSED, BUT NOT ARGUED**

**ORDER CONSISTENT WITH COURT'S RULING TO BE PREPARED BY:** Court

**ATTORNEYS PRESENT FOR PLAINTIFF(S):** **ATTORNEYS PRESENT FOR DEFENDANT(S):**

John Boyd/David Urias

Scott Fuqua

Anna Thea Bridge/Sharon Katz

Myrna Perez

**PROCEEDINGS:**

**Court in Session:** **9:07 a.m.**

**Court:** Calls case. Counsel enter appearances. Robbie Rodriguez, Plaintiffs' representative, present. Shannon Robinson, proposed intervenor, present. Pat Rogers, Jason Bowles and Nina Martinez, proposed intervenor present.

**Court:** Seems should first discuss motions to intervene.

**Mr. Boyd:** Oppose motion to continue preliminary injunction hearing, but as to motion to intervene,

would like opportunity to review - at this point oppose, but after looking at law on intervention may not oppose. Suggests can respond to motions no later than tomorrow.

**Court:** Cites to authority on intervention including opinions by this Court in Forest Guardians matter (CIV 02-1003), as well as opinion in the works in CIV 07-1043. Inclined not to grant any motion to continue preliminary injunction hearing, go ahead and hear what parties have to say and deal with motions to intervene at later time.

**Mr. Robinson:** Addresses Court regarding motion to intervene on his own behalf. Willing to “be patient” and wait until time Court is prepared to hear from him on his motion to intervene.

**Court:** Questions Mr. Robinson as to his current political involvement and registering voters.

**Mr. Robinson:** Represents is not running for re-election or registering voters.

Confirms with defense counsel that the Defendant takes no position on either motion to intervene.

**Mr. Fuqua:** Confirms.

**Mr. Rogers:** Addresses Court regarding motion to intervene on behalf of his clients. Suggests delaying preliminary injunction hearing for 7-10 days to allow response to be submitted would not be prejudicial to the parties. Represents would present evidence/testimony if preliminary injunction hearing occurs in future as opposed to today.

**Mr. Robinson:** Responds to Court’s further inquiry. Also represents would present evidence/testimony if hearing occurs in future as opposed to today.

**Mr. Boyd:** Responds to Court’s inquiry as to what, in terms of timing, is needed from Court.

**Mr. Fuqua:** Responds to same inquiry from Court.

**Mr. Robinson:** Responds to same inquiry from Court.

**Mr. Rogers:** Responds to same inquiry from Court.

**Mr. Fuqua:** All interested parties would like decision sooner rather than later.

**Court in recess: 9:50 a.m.**

**Court in session: 10:03 a.m.**

**Mr. Boyd:** Have discussed with co-counsel, and their position is that as to individuals and legislators the Plaintiffs oppose intervention - as to Republican party, they may have an interest in this litigation, but that interest is protected by the AG’s office - so do not oppose the Party’s intervention, so long as it does not result in a delay in holding preliminary injunction hearing. Want an opportunity to respond to motions to intervene. As to Coakley, believe she is more than adequately represented by the AG’s office.

**Court:** Asks if proposed intervenors want to act as an Amicus to the Court?

**Mr. Rogers:** No. Want to participate as parties.

**Court:** Take it would not be content to take up Plaintiffs' offer of coming into case, filing a brief, arguing today, examining whatever witnesses, but not delaying the hearing to hear additional evidence?

**Mr. Rogers:** If allowed to intervene would participate today as fully as Court would allow - will do best to file an answer and response quickly.

**Mr. Robinson:** Does not want to act as Amicus.

**Mr. Fuqua:** To the extent the intervenors seek to defend the constitutionality of the statute, the Defendant has no position on intervention. To the extent the intervenors intend to offer evidence that these Plaintiffs/organizations have subverted the electoral process the Defendant opposes the intervention.

**Court:** Will not rule on motions to intervene today and therefore the proposed intervenors will not be allowed to participate in today's hearing. Will look for Plaintiff's response and work to get decision out on motions to intervene as soon as can.

**10:10 a.m. Mr. Robinson:** Notifies Court is leaving hearing.

**Court:** Wants to deal with standard first.

**Mr. Boyd:** Argues regarding standard.

**Mr. Fuqua:** Argues regarding standard.

**Court in recess: 11:26 a.m.**

**Court in session: 11:47 a.m.**

Parties continue arguing regarding motion for preliminary injunction.

**Court in recess: 12:11 p.m. (until 1:15 p.m.)**

**Court in session: 1:22 p.m.**

Parties continue arguing regarding motion for preliminary injunction.

**Court in recess: 3:10 p.m.**

**Court in session: 3:19 p.m.**

Parties continue arguing regarding motion for preliminary injunction.

**4:46 p.m. Court:** Understands if Plaintiffs file their responses to the motions to intervene tomorrow it would take intervenors 1 day to reply - so if all briefing is in by end of week the Court will try to get decision out quickly. Would like to set a hearing on the motions to intervene knowing that the Court may get a decision out in advance of that hearing - also want to set at the same time a continuance of the hearing on the preliminary injunction if, in fact, the motions to intervene are granted - wants to set as a back up to trials and other hearings on 8/29 - asks if proposal would work for counsel?

**Mr. Boyd:** Will be on vacation, so Mr. Urias will cover that hearing.

**Mr. Fuqua:** Will be here on hearing in another case anyway.

**Court:** Will set to begin at 10:00 a.m.

**Court in recess: 4:52 p.m.**